PUBLIC PROSECUTOR

v.

TAMBI BIN MONIR & ANOR. AND ANOTHER APPEAL

HIGH COURT MALAYA, MELAKA
TUAN LOW HOP BING JC
[CRIMINAL APPEALS NO. 42-6-1993 & 42-7-1993]
8 JULY 1994

CRIMINAL LAW: Bribery - Section 3(b)(i) Prevention of Corruption Act 1961 - Offence of corruptly offering money as gratification as an inducement to withdraw a police report against respondents - Alleged offence of theft and shooting of cattle belonging to complainant - 1st respondent typed letter in presence of 2nd respondent addressed to DPP which was signed by complainant in order to withdraw complainant's police report - Definition of 'Corrupt' - Whether there was corrupt intent on part of respondents in offering money - Mode of settlement - Whether presumption under s. 14 of said Act has any application to members of public.

This was an appeal by the learned DPP against the order of acquittal and discharge of the learned Sessions Court Judge on 25 May 1993 in respect of two charges under s. 3(b)(i) of the Prevention of Corruption Act 1961. The sole question of law for determination in this appeal was whether there was any corrupt intent on the part of either both the respondents or the 2nd respondent, in offering the sum of RM2,000 as in the 1st charge or in giving the sum of RM650 as in the 2nd charge, to the complainant as an inducement to withdraw his police report against the 2nd respondent.

Held:

[1] In respect of both the charges, it is incumbent upon the prosecution to prove that the respondent in the first charge and the respondent in the second charge had done it corruptly.

[2] As both the respondents were not persons in the employment of any public body, but merely members of the public, the presumption under s. 14 of the Prevention of Corruption Act 1961, has no application. Therefore, the burden was on the prosecution to prove this essential element beyond reasonable doubt.

[3] The whole purpose of the payment to the complainant was to effect an application to the learned Deputy Public Prosecutor in order to bring about a withdrawal of the police report. The application to the learned Deputy Public Prosecutor with a view to withdrawal did not contravene any provision of the law, neither was it an act which the law forbids.

[4] The view of the learned Sessions Court Judge was correct that the complainant's letter to the learned Deputy Public Prosecutor in exchange for the sum of RM650 was for the loss suffered by the complainant by reason of his cow having been slaughtered and skinned. Even for that matter the offer of the sum of RM2,000, was indeed an act, the exercise of which was well within his legal rights.

[Appeal by DPP dismissed. Acquittal and discharge affirmed].

Cases referred to:

Public Prosecutor v. Datuk Haji Harun Bin Haji Idris (No. 2) [1977] 1 MLJ 15 ***(refd)***
Lim Chong Kooi v. Public Prosecutor [1965] 2 MLJ 169 ***(dist)***
Mohamed Taufik v. Public Prosecutor [1975] 1 MLJ 36 ***(dist)***

Legislation referred to:

Criminal Procedure Code, s. 260
Penal Code
Prevention of Corruption Act 1961, ss. 3(b)(i), 4(a), 6(1), 14

Other sources referred to:
Criminal Procedure in Malaysia, Mimi Kamariah Majid p. 195

For the prosecution - Ishak Sahari, Legal Advisors Office, Malacca
For the respondent - Shaari Nor; M/s. Shaari Nor & Co.

JUDGMENT

Low Hop Bing JC:
This is an appeal by the learned Deputy Public Prosecutor against the order of acquittal and discharge of the learned Sessions Court Judge on 25 May 1993 in respect of the following charges:

1st Charge:

That you on 13 November 1989, at about 7.30 a.m. at Batu $9^{1}/_{2}$ Bertam Ulu, in the District of Melaka Tengah, in the State of Melaka did corruptly offer to one Bakar Bin Md. Drus as gratification a sum of money to wit RM2,000 as an inducement to withdraw a Police Report viz Tg. Minyak Rpt. No. 732/89 lodged against Tambi Bin Monir for an alleged offence of theft and shooting of cattle belonging to Bakar Bin Md. Drus and that you have thereby committed an offence under s. 3(b)(i) of the Prevention of Corruption Act 1961 (Laws of Malaysia Act No. 57).

2nd Charge

That you jointly on 15 November 1989, at house No. 8000, Batu $8^{1}/_{2}$ Kg. Bertam Ulu, in the District of Melaka Tengah in the State of Melaka did corruptly give a sum of money to wit RM650 to one Bakar Bin Md. Drus as an inducement to him to withdraw a Police Rept. *viz* Tg. Minyak Rpt. No. 732/89 lodged against Tambi Bin Monir for an alleged offence of theft and shooting of cattle belonging to Bakar and that you have thereby committed an offence under s. 3(b)(i) of the Prevention of Corruption Act 1961 (Laws of Malaysia Act No. 57)•

From the evidence adduced by the prosecution, the facts of the case are not seriously disputed. The complainant PW1 was a kampong odd job worker. Sometime in November 1989, he discovered that five of the cows under his care were missing. The complainant later discovered that one of his cows was being skinned while his other four cows were in the stable of Abd. Hameed bin Hussin ("2nd respondent" for ease of reference). The complainant left the 2nd respondent's house and proceeded to Tanjong Minyak Police Station to lodge a report. The officer in charge of the police station Sgt. Ahmad advised the complainant not to lodge a report as the matter could be settled with the 2nd respondent. However, the complainant being dissatisfied with the advice of Sgt. Ahmad went instead to the Melaka Tengah Police Station to lodge a report which was accepted by the police there.

Some two days later Tambi bin Monir (the 1st respondent) went to see the complainant at the latter's house purportedly on behalf of and at the request of the 2nd respondent, informing the complainant that the 2nd respondent was seeking the complainant's help to withdraw the said report against the 2nd respondent, in which event the 2nd respondent was prepared to pay the complainant a sum of RM2,000. Subsequently the complainant reported the matter to Encik Ahmad Saberi (PW6) of the Anti Corruption Agency Melaka. PW6 then advised the complainant to accept the money from the 2nd respondent. On 15 November 1989 the 2nd respondent drove the complainant to the 1st respondent's house, from where they proceeded together to Sgt. Ahmad's house. Apparently after some discussion, the four of them *viz* the two respondents, the complainant and Sgt. Ahmad returned in the same car to the 1st respondent's house, where the 1st respondent typed a letter which was drafted by Sgt. Ahmad, addressed to the learned Deputy Public Prosecutor, Melaka in order to withdraw the complainant's police report. Upon the complainant signing the letter, the 1st respondent handed to the complainant the sum of RM650 in the presence of the 2nd respondent. The complainant used RM20 for his transportation expenses, while the balance of RM630 was surrendered to the Anti Corruption Agency.

The sole question of law for determination in this appeal is whether there was any corrupt intent on the part of either both the respondents or the 2nd respondent, in offering the sum of RM2,000, as in the first charge or in giving the sum of RM650 as in the second charge, to the complainant as an inducement.

In respect of both the charges, it is incumbent upon the prosecution to prove that the respondents in the first charge and the respondent in the second d charge had done it corruptly. Section 14 of the Act provides as follows:

> 14. Where in any proceedings against a person for an offence under s. 3 or 4, it is proved that any gratification has been paid or given to or received by a person in the employment of any public body, the gratification shall be deemed to have been paid or given and received corruptly as an inducement or reward as hereinbefore mentioned, unless the contrary is proved.

As both the respondents are not persons in the employment of any public body, but merely members of the public, the presumption under s. 14 has no application and therefore the burden is on the prosecution to prove this essential element beyond reasonable doubt. The word "corrupt" has been given a comprehensive definition by Raja Azlan Shah (FJ as he then was) in *Public Prosecutor v. Datuk Haji Harun Bin Haji Idris (No. 2)* [1977] 1 MLJ 15 at page 22 as follows:

> "Corrupt" means "doing an act knowing that the act done is wrong, doing so with evil feelings and evil intentions." (see *Lim Kheng Kooi v. Reg.* [1957] MLJ 199) "purposely doing an act which the law forbids" (see *R. v. Smith* [1960] 1 All ER 256).
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> "Corrupt" is a question of intention. If the circumstances show that what a person has done or has omitted to do was moved by an evil or guilty mind, then he is liable under the section. Thus if the accused used his position to solicit gratification with a guilty mind, he is caught within the ambit of the section.

As I have stated earlier the sum of RM2,000 was offered, and the sum of RM650 was indeed given to the complainant, for the purpose of applying to the learned Deputy Public Prosecutor with a view to withdrawing the police report. The whole purpose of the said payment was to effect an application to the learned Deputy Public Prosecutor in order to bring about a withdrawal of the police report. Is the application with a view to withdrawal as contained in Exhibit P5 i.e. the letter to the learned Deputy Public Prosecutor Melaka an act which is wrong, or the act done with evil feelings and evil intentions or was it an act which the law forbids? In my considered opinion, the application to the learned Deputy Public Prosecutor with a view to withdrawal does not contravene any provision of the law, neither was it an act which the law forbids. It is also not an act which is wrong in law. I agree entirely with the view of the learned Sessions Court Judge that the complainant's letter to the learned Deputy Public Prosecutor in exchange for the sum RM650 for the loss suffered by the complainant by reason of his cow having been slaughtered and skinned or even for that matter the offer of the sum of RM2,000, was indeed an act, the exercise of which was well within his legal rights.

The learned Deputy Public Prosecutor submitted that it is immaterial that the complainant had no power whatsoever to withdraw the charge or charges, if any, and in support thereof he relied on two cases namely *Lim Chong Kooi v. Public Prosecutor* [1965] 2 MLJ 169 and also *Mohamed Taufik v. Public Prosecutor* [1975] 1 MLJ 36. In *Lim Chong Kooi v. Public Prosecutor* it was held that in a prosecution under s. 4 of the Prevention of Corruption Act 1961, it is not open to an accused who is a member of a public body to argue that he had no power to do what he promised. In *Mohamed Taufik v. Public Prosecutor*, it was held that there was no necessity for the prosecution to prove that the person who gave the bribe had committed an offence or that the favour sought was in relation to the principal's affairs. In my considered judgment, the principles of law enunciated in these two cases in relation to s. 6(1) of the Act are only applicable to any proceedings against an agent as a member of a public body for any offence under s. 4(a) of the Prevention of Corruption Act 1961. In the circumstances it is clear that the provisions of s. 6(1) of the Act have no application to the instant cases, which involve a prosecution under s. 3(b)(i) of the Prevention of Corruption Act 1961 against two members of the public and not of any public body. Hence these two cases can be distinguished accordingly.

The mode of settlement which can be ascertained from the evidence adduced by the prosecution clearly shows an ammicable settlement between two willing parties, ready and able to accept mutual conditions in order to apply to withdraw the police report. There is nothing sinister or

surreptitious in this process. Letters from members of the public to the relevant authorities for the purpose of withdrawing a police report or for that matter withdrawing a charge against a particular accused or requesting the prosecution to enter into a *fiat of nolle prosequi* is an exercise of a legal right, which may or may not be consented to by the relevant prosecuting authority. Indeed the law of our land has given statutory recognition to the settlement of cases with or without intervention of the relevant authorities. An illustration may be found in s. 260 of the Criminal Procedure Code which provides for the compounding of offences under the Penal Code. The process of compounding an offence requires the agreement or arrangement between the victim and the offender whereby the offender will be forgiven and the victim will accept a compensation. Section 260 contains provisions for two types of compoundable offences, those in Part A and those in Part B. (see **Criminal Procedure in Malaysia** by Mimi Kamariah Majid at page 195). Other illustrations of the compounding of offences may be found in the road traffic legislations, legislations creating statutory offences and other local government legislations.

In respect of civil cases, rules of the Courts have been specifically made to facilitate and encourage settlement by two opposing litigants. Hence, it can be seen that the law recognizes and indeed encourages amicable settlement of cases either before the Court, the prosecution and the defence or even without the intervention of the Court or the prosecution.

On the question of inducement, I agree with the specific finding of the learned Sessions Court Judge that there is no inducement applied on the complainant nor was there any interference in the exercise of his legal rights as a complainant. The writing of the letter to the learned Deputy Public Prosecutor to apply for the withdrawal of the police report was a voluntary act on the part of the complainant.

In the circumstances I dismiss these appeals and affirm the decision of the learned Sessions Court Judge in acquitting and discharging the two respondents without their defence being called.